File No. (Motor II
49(R)
Leg.(Dept
B. BRANCH

Subject:— Rules under the
Motor Vehicles Act, 1939

P-E

File No. (Motor II)49(R)

Gen. 194 e.

80-E

Legal Department.

It appears from the bracketed protion of para 3 of H.D. note dated the 9th December 1948 at page 36, that the draft notification at page 18 was published in the Gazette for inviting objections and suggestions but the final publication of the notification in the Gazettee has been withheld. If so, there is no need to publish the draft gagain in the Gazette for invitin objections and suggestions for the sake of the minor amendment suggested by the Provincial Transport Officer at page 31. The draft notification may now be finally published in the Gazette after inforporating the amendment suggested by the Provincial Transport Officer.

Sd/ J.R.D.
Additional Secretary to Government.

U.R. to H.D.No.536, dated the 15th January 1949.

E.K.N. 4/6/56

4C.

Legal Department.

The proposal in this case is to amend rule 42 by providing that all temporary transfers of possession of motor vehicles should be reported to registering authority It is stated that the proposed amendment should cover all cases of temporary transfers which include the transfer of possession of a car to a friend or relative. It does not appear that such a rule will be valid. Section 31 provides that the transfer of the ownership of a motor vehicle shall be reported within 30 days. Clause (i) of section 41(2) provides for a rule being made for the furnishing of particulars upon the transfer of possession of a motor vehicle under the terms of a hiring agreement. Under sub-section (1), no doubt, rules can be made for carrying into effect xxxxx the provisions of Chapter III of the Act. But it does not appear it will wover a case in which a vehicle is being used otherwise than for hire by a person other than the owner. If the use of private taxis is to be controlled in a greater degree, the object in view can be achieved by suitably amending sub-rule (2) of rule 42. The Provincial Transport officer may be asked to consider this point.

2. The question whether the offence of using a motor vehicle without a permit under section 123(1) should be made a cognisable offence by suitably amending section 128 is for the Administrative Department to decide. The provincail Legislature is competent to undertake the necessary legislation. But as this will involve an amendment of an Act relating to a matter in the Concurrent List, the Government of India has insisted that it should be on an uniform basis throughout all the Provinces and the previous approal of the Government of India will be necessary for the purpose.

Sd/ J.R.D.
Additional Secretary to Government.

E.K.N.4/6/56
4C.

U.R. to H.D.No.505, dated the 14th January 1949.

Legal Department.

Rule 76(2) of the BombayMotor Vehicles Rules, 1940, is made under section 68(2) (b) of the Bombay Motor Vehicles Act, 1939. A general rule as proposed by the Regional Transport Officer, Bombay, at page 3 cannot be made under that section or any other section of the Act for giving copies, on payment, of documents connected with appeals under different provisions of the Act. Under section 68 rule can be made for grant of copies of documents connected with appeals preferred under Chapter IV. Similar rules can be made under section 21(2) (b) and 41(2)(b) for grant of copies of documents connected with appeals preferred under Chapters II and III, respectively. Accordingly a revised draft is sent herewith containing amendments to rules 8,26 and 76 which are covered by sections 21, 41 and 68, respectively.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D.,No.3000, dated the 17th March 1949.

- E.K.N. 4/6/56

4C,

Legal Department.

In place of H.D. at page 57 ante, a revised draft notification is sent herewith.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D.,No.3792, dated the 8th April 1949.

E.K.N.4/6/56

4C.

Legal Department.

Section 42(4) of the Motor Vehicles Act, 1939, provides that subject to the provisions of sub-section (3), sub-section (1) shall, if the Provincial Government by rule made under section 68 so prescribes, apply to any motor vehicles adapted to carry more than nine passengers including the driver. It is true that a rule can, therefore, be made under section 68 applying the provisions of sub-section (1) of section 42 to motor vehicles adapted to carry more than nine passengers. But all that sub-section (1) of section 42 provides is that no owner of a vehicle to which the sub-section applies or is applied shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional Transport Authority etc. As pointed out in para. 2 of R.L.A's opinion No.5857, dated 4th June 1947 at p.63 ante, a motor vehicle to which the provisions of sub-section (1) of section 42 are applied does not become a transport vehicle within the meaning of the Act. It would not be legally feasible to make it compulsory for a vehicle to which sub-section (1) of section 42 is made applicable to obtain a permit prescribed for certain transport vehicles i.e. contract carriages and to apply to it the provisions which are applicable to transport vehicles i.e. contract carriages and stage carriages. Draft rules 55A and 157A proposed at p.99 ante are not therefore in order. For the purpose in view a separate permit may beprescribed for the vehicles as was proposed in the draft notification at p.45 ante.

For ensuring safe plying of the vehicles as observed by the Government of India at p.81 ante the provisions of the Act particularly of Chapter V which apply equally to

all

all classes of vehicles are sufficient. If necessary, a rule could be made under clause (1) of sub-section(2) of section 70 for the periodical testing and inspection of the vehicles by prescribed authorities. Draft rule 157B may be modified accordingly.

Sd/ J.R.D.

Additional Secretaby to Government.

U.R. to H.D.,No.4279, ated the 20th April 1949.

H.K.N.4/6/56

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Legal Department.

The draft notification at page 5 ante, as amended is in order.

Sd/ J.R.D.
Additional Secretary to Government.

U.R. to H.D.,No.5031, dated the 7th May 1949.

E.K.N.4/6/56

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Legal Department.

It appears from the correspondence in this case that the real difficulty is about the formation of a quorum. It is not clear however how the same can be overcome by amending rule 47 of the Bombay Motor Vehicles Rules, 1940, as proposed by the Provincial Transport Authority in his letter at a page 23 ante. Even if the rule is amended as suggested by the Provincial Transport Authority and the Home Department the difficulty about quorum is likely to continue. The Home Department is therefore request d to consider whether the purpose cannot be achieved by amending sub-rule (4) of rule 47 by the addition of the following:-

> " If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the members present shall be a quorum".

Sd/ J.R.D.

Additional Secretary to Government.

J.R. to H.D.,No.6763, dated the 18th June 1949.

E.K.N. 4/6/56

4C.

Legal Department.

It does not appear that it is necessary to amend the various rules in the Bombay Motor Vehicles Rules, 1940, as proposed by the Home Department. The intention appears to be to empower the Assistant Regional Transport Officer, Kolhapur, to exercise the powers of the RTO (as far as the Kolhapur State area is concerned. This intention can be given effect to by amending the definition of the Regional ~~Rap~~ Transport Officer so as also to include the Assistant Regional Transport Officer" on the lines of the amendment made in the definition of "Provincial Transport Officer" in clause (e) of rule 2 of the Bombay Motor Vehicles Rules, 1940. A revised draft notification incorporating this amendment is sent herewith. The Home Department should consider whether therevised notification will achieve the object which they have in view.

2. As regards the amendment proposed by the Home Department in sub-rule (1) of rule 48, it appears from "B" on page 15 ante that the only object is to enable the Assistant Regional Transport Officer to perform the functions of the Secretary or the Executive Officer. As sub-rule (1) of rule 48 stands at present it is open to the Provincial Government to appoint the Assistant Regional Transport Officer, Kolhapur, as the Secretary and Executive Officer of the Regional Transport Authority. No amendment of rule 48 is needed for this purpose.

3. In view of the inclusive definition proposed in the revised draft notification no amendment of rule 211 or any other rule is also necessary.

Sd/ J.R.D.

Additional Secretary to Government.

U,R. to H.D.,No.6761, dated the 18th June 1949.

E.K.P.4/6/56

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Legal Department.

It appears that the main object of issuing the rules as prbposed at pages 7-11 ante is to ensure that the State Transport is not made liable for the damage or loss caused to the luggage carried by passengers or consigned to the State Transport for carriage. According to the decided cases it would be competent to the State Transport to protect itself by express contract from liability for the negligence of itself or its servants. If therefore the State Transport issues tickets in which conditions subject to which the luggage of passengers shall be carried are entered they will bind the persons to whom the tickets are given, provided that they are not extravagant as to amount to fraud or so irrelegant as to be entirely foreign to the contract which the parties are making. (1920) 3 K.B.689 at page 703.

The conditions must be indicated clearly upon the tickets issued. The rules subject to which the tickets are to be issued in the present case are many and if all these are to be printed on the tickets they may have to be printed in small type and may be attacked on the ground that they are not clear. For the object in view it would be sufficient if the ticket contains the following statement:

"This ticket is issued subject to the conditions contained in the notices pasted at the stations and important stands of the State Transport and to the Special condition that all luggage or parcels carried by or consigned to the State Transport shall be carried by or consigned to the State Transport entirely at the risk and responsibility of the consignor or the owner, as the case may be, and the State Transport shall be under no liability for loss or damage to any such luggage or parcel howsoever caused.".

The other rules are non-statutory and it will be sufficient if they are notified at the stations and important stands of the State Transport.

Sd/ J.R.D

dditional Secretary to Government

U.R. to H.D., No. 6943, dated the 23rd June 1949.

E.K.N. 4/6/56

4C.

Legal Department.

The amendment suggested by the Provincial Transport Officer in his letter at page 9 ante is not suitable. Sub-rule (6) of rule 46 and sub-rule (5) of rule 47 as they stand authorise the Chairman to appoint an acting Chairman each time when he is unable to attend a meeting. It will be better and more convenient to empower the Chairman to make a general nomination e.g. at the beginning of each year to appoint a panel of say four members and laying down theorder of preference in which such members shall act as Chairmen whenever the Chairman is absent or is unable to attent . The draft suggested by the Provincial Transport Officer would require the Chairman to make the appointments every time he is disabled from attending a meeting. It is also defective in as much as it proposed to empower the Chairman to nominate "a member". Again instead of leaving the number of members that can be appointed to the discretion of the Chairman, it will be better if a fixed number is laid down in the rule. The Provincial Transport Officer in his letterat page 1 ante had suggested 3 or 4 members. A revised draft Notification incorporating these amendments is sent herewith. A small consequential amendment has also been made in sub-rule (7) of rule 46 and sub-rule (6) of rule 47.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D.No.9328 dated thw 19th August 1949.

E.K N.406/56

4C.

Legal Department.

A revised draft notification is sent herewith.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D.No.7992, dated the 15th July 1949.

F.K.N.4/6/56

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Legal Department.

The amendment of rule 15 is intended to require a person who applies for a learner's licence to undergo a test in road traffic regulations. But the proposed provision can better be inserted as a new sub-rule (2A) of rule 15 rather than as a additional proviso to sub-rule (1) as proposed by the Home Department.

A revised draft Notification incorporating this amendment is sent herewith.

2. The other amendmentsuggested by Home Department is in Form P. Tem A. which is a form of application in respect of a temporary permit and in form P.tem. which a form of temporary permit. But the amendments suggested in those forms are not quite clear. According to the amendment proposed theholder of a temporary permit undertakes to make a declaration on the expiry of the temporary permit that the vechcle shall not be used after the expiry of the temporary permit and that failing such declaration he shall be liable ~~af~~ for using the vehicle without a permit. Temporary permits authorising the use of transport vehicles temporary are are granted under sub-section (1) of section 62 of the Motor Vehicles Act,1939, but such permits can be effective for a limited period not exceeding four months. On the edpiry of the period the use of the vehicle will be in contravention of section 42 of the Act and consequently punishable under section 123. The amendment proposed by the Home Department will not serve any useful purpose. An offence under section 123 of Motor Vehicles Act, 1939, consists of the use of a vehicle without permit. These amendments have t erefore

been deleted from the revised draft Notification.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D.No.9622. dated the 25th August 1949.

E.K.N. 4/6/50

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Legal Department.

The draft notification at pages 155-157, as formally amended, is in order.

Sd/ J.R.D.

Additional Secretary to Government.

U.R. to H.D.No.9643, dated the 25th August 1949.

E.K.N. 4/6/56

4C.

Legal Department.

The expression "goods vehicle" as defined in section 2(8) of the Motor Vehicles Act, 1939, means any motor vehicle constructed or adpated for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods solely or in addition to passengers. "Goods" includes live-stock and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailor attached to a motor car or the personal luggage of passengers travelling in the vehicle. The R.T.O. has attempted to define these two expressions at p.16 ante. But it is doubtful whether the definitions as proposed would serve any useful purpose. Ultimately what will constitute luggage or personal effects will be a question of fact in each case which may be determined by the courts in the light of the judgment in Macrow Vs. the Great Western Railway company L.R. 6Q B. 612. Obviously motor vehicles can be deemed to be used for the carriage of goods within the meaning of the definition in section 2(8) only when they are so used as a rule or permanently; The occasional use of such a car will not make it a transport vehicle. Moreover, if the Act is amended as proposed the occasional use by an owner of a motor vehicle for carrying his own goods might also alter the nature of the vehicle. For these reasons it does not appear feasible to amend the Act as proposed; nor will it be feasible to amend the rules.

Sd/- J.R.D.
Additional Secretary to Government.

U.R. to H.D.No.1154 dated the 14th October 1949.

E.K.N. 4/6/56

10.

Legal Department.

In place of the draft notification at pages 115 to 119 ante, a revised draft notification is sent herewith.

Draft rule 157A. - The draft rule in effect makes it compulsory for a private service vehicle to carry a certificate fitness. For the reasons stated in para. 2 of the R.L.A's opinion No. 5857 dated 4th June 1947 it would not be intravires. It has, therefore, been revised suitably and brought within the ambit of the rule making power conferred by section 70(2)(1). The department may specify theperiod within which the vehicle should be produced for the periodical testing and inspection in the absence of a notice form the Regional Transport Officer.

Amendments No.(7) and(8) in therevised draft:- The Department's draft does not contain the form of application and the form of permit for private service vehicles. It is presumed that the forms at pages 31 to 35 ante are to be prescribed. The two amendments are intended to achieve this object.

Sd/- J.R.D.

Additional Secretary to Government.

U.R. to H.D.,No.12982, dated the 15th November 1949.

E.K.N.4/6/56

4C.

Legal Department.

Section 8 of the Motor Vehicles Act, 1939, provides that every licence except a licence under section 14 shall be in Form D as set forth in the First Schedule. Under section 10, a licence issued under the forgoing provisions is effective without renewal for a period of 12 months from the date of its issue or last renewal. In view of these provisions a driving license granted under section 8 is effective for a period of 12 months from the date of its issue. It will be seen from Form D in the First Schedule that the authorization to drive a public service vehicle remains in operation for the period for which a driving licence is valid. Since the driving licence is valid for a period of 12 months from the date of its issue, it will not be possible to grant authorization to drive a public service vehicle for a period not less than 12 months. The proposal, therefore, to grant temporary authorizations to drive public service vehicles is not legally feasible and no rule can be made for the purpose of granting such authorizations.

2. In view of the wide provisions of section 67 which gives power to the Provincial Government to make rules to regulate in respect of stage carriages and contract carriages the licensing of Conductors of such vehicles, it will be possible to make a rule for the granting of temporary Conductor's Licences, but it is for the Home Department to consider whether it is worthwhile to make a rule for the grant of temporary Conductors' Licences when no rule can be made for the grant of temporary authorizations to drive public service vehicles.

Sd/- J.R.D.

Additional Secretary to Government.

U.R. to H.D.,No.13200, dated the 21st November 1949.

E.K.N.4 6/56

40.

H.D. (E).

Submitted with reference to the Legal Department note at p.4 ante.

2. Copies of the notification at p.2 ante have already been distributed to the officers and associations concerned. The necessary correction will be carried out in the revised edition of the B.M.V. Rules, 1940, which is under reprint. (The proof copy of the reprint of the B.M.V.Rules 1940, is being examined by the P.T.O).

x PP.135.145 of the papers put up.

office copy has been corrected p.136 ante.

3. Before these papers are returned to the Legal Department the P.T.O. and the Supdt. G.P.&S. Bombay, may see them U.O.for information The supdt.G.P.&S.,may be also requested to carry out the necessary correction in the correction slip No.XXXVI to the rules in question before copies thereof are printed.

* As the proof copy of the reprint of the Rules is being examined by him.

II.A draft of the correction slip was forwarded to him.with our memo No.455/5-E, dated the 12th May 1949.

Sd/

E.K.N.4/6/56

U.O. to P.T.O.Supdt.G.P.&S.dt.16/8/49.

4C-

P.T.Office.

Seen and passed on with compliments to the Supdt. Govt.Printing & Stationary.

P.T. Officer.

U.O.R. to Supdt.,G.P.&S.,Bombay No.968 dated 21/6/49.

R.KN. 4/6/56

4C.

Below U.O.R. dated 16-6-1949 from Govt. in the Home Department, Bombay.

PRINTING AND STATIONARY DEPARTMENT.

The number of sub-rule (3) has been added to the amendment to Rule 165 in MSS. received from Govt.and the correction will be carried out while printing 1949.

Sd/-

Superintendent.
Govt.Printing & Stationary, Bc___.

U.D.R. No.D/ 1662, dated the 12/7/1949.

Government in the Home Department, Bombay.

E.K.N.4/6/56

4C-

Legal Department.
L.T.No.11244.dt.22/7/49.

Submitted.

2. H.D. and the Supdt. Govt.Printing and Stationary have taken note of our suggestion at p.4 ante.

This may now be fited in Motor IX/49(R).

(through D and A for carrying-out the correction in vehicles rules).

Sd/

The Supdts' memo. at p.9 is not quite clear:

Sd/

But no action on our part is necessary.

Sd/

Submitted.

2.Necessary connecteds have been carried out in the copies of the Bomaby Motor Vehicles Rules 1940 with secy. and Addl Secy.

-(through A')

Sd/ Supdt.

Necessary correction have been carried out in A'Branch copy.

R.K.H.4/6/56
4C.

Supdt.